

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Creation of a Low Power Radio Service)	MM Docket No. 99-25
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)	

To: The Commission
Attn: Media Bureau

**COMMENTS OF THE
PUBLIC RADIO REGIONAL ORGANIZATIONS**

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August 22, 2005

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SUMMARY

The PRROs strongly urge the Commission to maintain the current “co-equal” priorities for FM translators and LPFMs.

Over nine (9) million persons receive their public radio through a public radio FM translator (reserved and non-reserved band translators). These public radio FM translators are local services. Local listeners rely on public radio FM translators to meet local needs. Decades of federal, state, local and individual investments in public radio FM translator services would be jeopardized or wasted if the FCC makes FM translators secondary to LPFMs. Moreover, given that all public radio expansion on reserved band FM and FM translator channels has been stymied – at every turn – for the better part of a decade, the March 2003 FM translator window provided the only opportunity to bring new public radio service (via public radio FM translators) to members of the public that urgently desired (and requested) such services to meet current local needs.

As the compelling personal stories in Appendix D demonstrate, public radio translators are the epitome of public service. Loss of any portion of public radio FM translator service would harm the public interest and disserve the goals of localism.

Finally, there are better, less draconian ways of resolving preclusion issues stemming from the “flood” of FM translator applications in the March 2003 window. The FCC can impose new measures now on the remaining frozen applications from the March 2003 filing window to resolve the congestion and preclusion issues and restrict future FM translator windows, without upsetting the apple cart by a whole-sale change with dire effects on public radio FM translators.

The PRROs urge the FCC to keep the status quo for FM translators and LPFMs.

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Eastern Public Radio (“EPR”), California Public Radio (“CPR”), Public Radio in Mid-America (“PRIMA”), Southern Public Radio (“SPR”), and Western States Public Radio (“WSPR”) (collectively, the public radio regional organizations or “PRROs”), file these comments in response to the FCC’s *Second Order on Reconsideration and Further Notice of Proposed Rulemaking on the Creation of a Low Power Radio Service* (the “*Second LPFM NPRM*”).

The sole purpose of the PRROs comments in this proceeding is to support the status quo on the issue of the relative interference protections afforded to LPFM station and FM translator stations, as well as to reiterate the public interest benefits of public radio FM translator stations. Over nine (9) million persons in the United States receive a public radio signal through a public radio translator station.¹ As shown in the extensive “personal stories” of public radio translator licensees (with an aggregate 220 translator stations) in Appendix A, these stations provide vital local service to citizens across the entire United States. Disruption of this service would harm the public interest.

¹ Corporation for Public Broadcasting, Network Report, Census of Population and Housing (1990).

In the first LPFM proceeding, the FCC decided to “place LPFM stations and FM translators on essentially equal footing.”² Now, LPFM advocates have asked the FCC to “reassess” the interference relationships between LPFM stations and FM translators and give LPFM stations priority over FM translators. The FCC agreed to reevaluate the co-equal status, given the “extraordinary volume” of applications filed in the FCC’s March 2003 (nonreserved band) FM translator filing window.

The PRROs urge the FCC to continue with the current “co-equal” status of the LPFM service and FM translator service. The FCC struck the right balance before with co-equal status, and cannot now change its mind without drastically affecting existing public radio service via FM translators and disserving the public’s interest in its existing and future public radio FM translator service.

I. INTRODUCTION

EPR, CPR, PRIMA, SPR and WSPR are regional membership organizations for public radio stations across the contiguous United States. These organizations represent over 169 noncommercial educational radio station licensees with over 370 combined station transmitters (primary and FM translators).

Together, the PRROs represent public radio stations in virtually every state in the United States. PRRO member stations include stations that serve entire states or regions, major markets, medium markets, smaller markets and isolated rural areas with national and local programming, including substantial news and public affairs programming, classical music programming, jazz, world music, alternative music, minority-oriented programming (including African/American, Hispanic and Native American programming) and other niche music and cultural programming

² *Creation of Low Power Radio Service*, 15 FCC Rcd 2205 (2000)(“*First LPFM Order*”).

genres. PRRO members include FCC licensees that are state and governmental entities, college and universities, school districts and nonprofit educational organizations (also known as “community” licensees whose governing boards are drawn from the community of license);

PRRO members engage in active community outreach. The unifying factor among these diverse licensees and stations is a common mission to provide the highest quality public radio service to their communities of license and the citizens of the United States. PRRO stations do not answer to a corporate bottom line or to corporate shareholders; their very *raison d’être* is public service.³

While the PRROs are sympathetic to some of the concerns expressed by the LPFM advocates about the overwhelming number of “speculative” FM translator applications filed in the March 2003 window, the right answer is not to give LPFM stations priority over FM

³ The Commission itself has stated:

Public broadcasting is explicitly encouraged by various Commission rules and policies. Perhaps most notable among these is our spectrum reservation policy whereby noncommercial stations are afforded protected frequency allocations for their exclusive use. Other state and federal governmental entities also accord public stations favored status by various means, including preferential tax treatment and considerable direct financial subsidies...[T]he very definition of the service, the status of its operating stations, and its essentially non-profit, noncommercial programming nature make public broadcasting stations very different, in programming terms, from their commercial counterparts. With this in mind, we expect that as a practical matter the programming of these stations will reflect their special status and that they will provide their communities with significant alternative programming designed to satisfy the interests of the public not served by commercial broadcast stations. We would assume, for example, that in the rare case where the commercial media market appeared to ignore a significant issue in a community, the public stations would be among the first to address it, providing an important alternative and competitive spur to the other local media. Such responsive programming would be entirely consistent with the nature and historical performance of these stations.

See, e.g., Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licenses, 98 FCC 2d 746, 751 (1984).

translators. The right answer is for the FCC to place reasonable limitations on aggregate FM translator ownership nationwide, to impose reasonable limitations on the number of FM translator applications that can be filed by an applicant (or a related entity) during any given filing window, and to enforce existing FCC requirements regarding the appropriate licensing and use of non-reserved band FM translator stations.

As membership organizations, the PRROs are vitally interested in ensuring that the radio spectrum used by their public radio member stations is properly regulated, so that PRRO member stations can continue to serve existing listeners and will have opportunities to grow and expand public radio service throughout the United States. The PRROs have concluded that changing the “status quo” with respect to FM translator and LPFM interference protections would unnecessarily de-stabilize existing public radio FM translator service that listeners have relied on (and invested in) over a series of decades, as well as long-held plans for FM translator expansion projects filed in the March 2003 filing window. The public interest would not be served by giving LPFM any sort of priority over FM translators.

Congress has found and declared that:

(1) it is in the public interest to encourage the growth and development of public radio and television broadcasting, including the use of such media for instructional, educational and cultural purposes;

(2) the encouragement and support of public telecommunications, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government;

(3) it furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, which will constitute an expression of diversity and excellence, and which will constitute a source of alternative telecommunications services for all of the citizens of the Nation;

(4) it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States;

(5) public television and radio stations and public telecommunications services constitute valuable local community resources for utilizing electronic media to address national concerns and solve local problems through community programs and outreach programs;

(6) it is in the public interest for the Federal Government to ensure that all citizens of the United States have access to public telecommunications services through all appropriate available telecommunications distribution technologies;

47 U.S.C. Sec. 396 (a) (2), (4), (5), (7), (8) & (9) (1999).

As the stories set forth in Appendix A demonstrate, these Congressional goals are being fulfilled by public radio FM translator stations.

II. UNDERSTANDING THE PUBLIC RADIO TRANSLATOR FRAMEWORK

In order to reassess the relative interference protections afforded to FM translators and LPFM stations and best serve the public interest, convenience and necessity, the PRROS submit that an understanding of the history and use of public radio's use of FM translators is needed. This section is intended to provide a brief overview of the FCC policies, financing, and other issues that have impacted the public radio industry's deployment of FM translators and, therefore, the public's interest in the continued availability of such service.

A. Applicable FCC Rules

As the FCC staff is well aware, the FM translator rules and policies make a distinction between "reserved band" FM translator stations (on Channels 200-220) and "unreserved band" FM translator stations (on Channel 221-300).

Unreserved Band Translators. Eligibility for unreserved band translators is quite broad. However, commercial stations owning and operating such FM translator stations cannot use the translators to extend service beyond their protected contours – instead, such translators are limited to providing fill-in service within the commercial station's protected contour. FM translators using unreserved channels are not permitted to use alternative signal delivery to feed a

signal to a translator – the translator must be able to pick up an “off-air” feed of the primary station (or of an FM translator that rebroadcasts the primary station). Moreover, the FCC rules strictly limit the ownership structure and financial support for third-party FM translator stations rebroadcasting a commercial station’s signal outside its protected contour. In addition, given the fundraising limitations on translator stations, there is not a compelling financial incentive for third-party entities to own and operate translator stations that rebroadcast commercial stations. For these reasons, the commercial radio industry has not (and cannot) make widespread use of FM translator stations to extend service.

However, public radio stations have successfully used unreserved band FM translator stations to extend service to nearby unserved areas – limited, of course, by the requirement that such translators must receive an off-air feed, and cannot use a satellite feed or alternative signal delivery mechanism.⁴ These public radio translators are particularly needed when the reserved band frequencies in the area are unavailable due to frequency congestion, TV Channel 6 protection requirements, or other preclusion issues.

Reserved Band Translators. Eligibility for reserved band translator frequencies is restricted to entities qualifying as “noncommercial educational licensees” under applicable FCC rules. Generally, reserved band translators owned and operated by the licensee of the primary station can be used to expand signal coverage beyond the primary station’s contour. Moreover, such translators are eligible to use alternative signal delivery (microwave, fiber, satellite, etc.) to feed the signal to the translator. For all of these reasons, public radio has long embraced the use

⁴ Thus, Prometheus’s claim that translator applications filed in the March 2003 window (for unreserved band translators) are using satellite delivery must be misplaced. Use of satellite feeds for unreserved band translators (or any other type of feed other than an off-air pick-up) is clearly impermissible under FCC rules. *See Second LPFM* at 16, note 129.

of reserved band translators as a cost-effective way to expand services to the public and provide services to rural and other unserved areas.

Thus, before the massive March 2003 filing window, the vast majority of FM translator stations authorized by the FCC were licensed to noncommercial educational broadcasters – of one sort or another, on reserved band channels and nonreserved band channels -- while only a portion of those translators are licensed to public radio stations.

B. Financing/Funding of Public Radio Translators

Public radio FM translator projects are financed through a unique blend of federal grants, Corporation for Public Broadcasting (“CPB”) funding, state support, local capital campaigns run by local citizens or citizen groups that desire access to public radio programming, and by charitable contributions to public radio stations. In sum, there has been a vast investment – at all levels – federal, state, local and individual – in the current public radio translator system.

For example, the federal government -- through appropriations to the Corporation for Public Broadcasting (“CPB”) and the Public Telecommunications Facilities Program (“PTFP”) of NTIA, U.S. Department of Commerce -- has invested heavily in FM translator stations to extend service to unserved or underserved areas or provide service to rural areas that are sparsely populated.⁵ As shown in Appendix A, more than 110 of the 220 public radio FM translator stations reporting data have relied on PTFP (i.e., federal) funding for translator projects (over 50%).

Many states have also made investments in public radio FM translator stations, either through state-owned public radio stations or through state support of other state-related entities

⁵ This investment is consistent with the Congressional mandate set forth in Section 396(b) of the Communications Act, described above.

that own and operate public radio stations (such as state universities and colleges). For example, Appendix A shows that the West Virginia statewide public radio network, WLRN in Miami, and Minnesota Public Radio all received state appropriations/investments in their FM translator stations (including, for WLRN, State of Florida Department of Education grants.)

Even more importantly, a majority of public radio FM translator projects are funded through some sort of local capital campaign. In those campaigns, active, interested citizens desiring to bring public radio service to their communities have volunteered to seek out contributions from local businesses, local organizations and local individuals, all for the support of the FM translator station. As shown in Appendix A, over 100 of the 220 public radio translator stations reporting data rely on capital campaigns or ongoing community support for their translators (over 45%).

It is important for the FCC to note that local citizens desiring public radio translator service ask for these services in their communities, and pony up their own time, talents and funds to help make public radio FM translator projects happen.⁶ Similarly, it would be a mistake for

⁶ See Appendix A. “In Port Orford school children sold soft drinks door-to-door after school to help raise matching funds. Subsequent to the construction of Port Orford’s translator service, the City Government filed its State-mandated Economic Development Plan and identified its public radio translators as among the top-5 factors essential to the City’s financial health and future economic development. In Coos Bay the local community college president took out a personal loan to pay for the construction and then spent another year raising funds in the community to recover the costs. In Crescent City the local hospital administrator spear-headed a local fundraising campaign. In Yreka the city attorney took the matter to the City Council which formally advocated for a fundraising campaign to raise the necessary monies. In Weed the local Chamber of Commerce served as the fundraising agency to secure matching funds. In Burney a local pastor chaired the fundraising campaign and used his pulpit and the local branch of the county library to help spearhead the effort. In Sutherland/Glide the County Commissioners used scarce county funds to match the federal grant monies because they considered providing public radio service so essential to this small community’s welfare.” (Jefferson Public Radio).

“KUNC is a small broadcaster and, as such, can not afford to buy and build translators on its own. The people of Buena Vista and Salida organized and would not be denied. Their grass
continued...

the Commission to think that FM translator stations are not “locally” supported, or that the local community has not already “spoken” about what it thinks will best serve its local interests, when it funds or supports a public radio translator project.⁷ Public radio FM translators are just as “local” as LPFMs, in the way that listeners use and rely on those services.

C. Opportunities for Providing New Public Radio Service Are Limited Right Now

As the FCC notes in the *Second LPFM Order*, there has been no opportunity for public radio stations to file new reserved band NCE FM applications since before 2000 or reserved band FM translator stations since before 1997. However, despite the freeze on applications, the public’s demand for new public radio stations and new public radio FM translator stations has not abated during this time. In fact, public radio listenership, and demand for public radio services to unserved or underserved areas has mushroomed. There are literally hundreds of expansion and other public radio projects on hold, awaiting resolution of old mutually exclusive FM and FM translator proceedings (to be decided under 307(b) criteria or under the point

...continued

roots efforts raised enough money to build a translator for their community. It is a similar story for the people in Steamboat Springs. The people in Summit County organized and formed a group called "Summit Public Radio." They own translators that bring in not only KUNC, but also Colorado Public Radio's Classical Music Service (KVOD) and Denver's Jazz Station, KUVO (also a public radio station) into their communities. The Region One Translator Association is set up as a special taxing district to bring rural areas in Colorado's very sparsely populated Eastern Plains television and public radio service. Many of these folks would have no options for public radio without this service.” (KUNC)

⁷ See Appendix A. “We received an invitation from a competing Indiana university – Indiana State University – to establish a translator in Terre Haute. ISU President John W. Moore believed that he could improve ISU’s position both as an educational institution and as a magnet for superior faculty, if he could offer an NPR-affiliated public radio station. In addition to the ISU request, WFIU had received hundreds of requests from listeners who missed us. At one point, they were all listening to WFIU on local television cable. When cable removed WFIU, they were left without their public radio fix.” (WFIU)

system), awaiting a filing window for new NCE FM station applications or awaiting a filing window for new reserved band FM translator station application. Simply put, there is a near decade-long backlog on much-needed public radio service expansion.⁸

In the meantime, public radio stations took advantage of the only opportunity in the past eight (8) years to bring much-demanded public radio service to the public. Public radio stations filed applications in the March 2003 FM translator filing window. Because of the limitations noted above regarding off-air delivery for unreserved band translators, these applications were not filed willy-nilly or on a nationwide basis with thousands of filings made for speculative purposes. Instead, public radio stations -- in consultation with experienced engineering and legal advisors -- filed for FM translator stations in nearby areas ("local" to their existing operations) that would best serve the public's needs and fill in the most pressing gaps in coverage.⁹ Even so, processing of those applications is now being held up, as the FCC re-evaluates the relative interference protections of FM translators and LPFM stations in this proceeding. Public radio expansion has been stymied -- at every turn.

⁸ In some sense, the backlog is well over a decade -- NCE MX processing was in a state of flux from the initiation of GC Docket 92-52 (in 1992) until the NCE "point system" was upheld by the courts last year.

⁹ See Appendix A. "There has been great interest and support (contributions) from people in these communities [to be served by our translators], as was noted in our PTFP grant application. Given the freeze on noncommercial FM applications, translators are the best way to serve this significant and urgent need." (WDUQ); "The largest driving factor to move to build these translators was numerous listener requests for service to their area. The part of Oklahoma to the south/southeast of Oklahoma City is less served by public radio, particularly the news/information program schedule KGOU carries. Oklahomans, coming to Norman or Oklahoma City, discovered our programming and inquired about how KGOU might serve them. Or, they heard about public radio and discovered it here, then tell us they want it in their town. We will be fundraising from these communities to build the various translators because of the public support. When the opportunity was open at the FCC for translator applications in early 2004, we jumped at the chance to expand service to the towns from where we had the most requests and to do it in the most economical way." (KGOU)

D. Public Radio FM Translators Help Put the “Public” in “Public Interest”

Most compellingly, public radio translators are the epitome of the public interest, at its best. First, public radio translators serve extremely rural communities. According to Appendix D, nearly 70% of public radio translators reporting data serve rural areas (152 of 220 reporting). They go where no one else will go, to provide service to listeners. For example, Station KUNM in Albuquerque operates seven (7) rural translator stations, serving an estimated population of 50,025 persons over an astounding 2,936 square kilometers of combined service areas. Average population density in those areas is only 17.04 persons per square kilometers. But KUNM’s story is not unique, as these excerpts from Appendix A demonstrate:

- * “The 8 rural translators will be the only local signals in their communities.” (emphasis added) (WRVO);
- * “There was no reliable public radio service to the [Florida] Keys before these translators were built” (WLRN);
- * “Listeners in rural areas, such as Union, Clarksburg and Elkins tell us that West Virginia Public Radio (available in these areas only through translators) is their lifeline to news and fine music.” (West Virginia Public Radio);
- * “New Mexico is a very rural and very poor state. All translators were built at the request of communities.” (KUNM);
- * “WNCPRI must employ translators to get our signal over and around the mountains of Western North Carolina and onto the ground where the populations reside....While technically these translators are “secondary” services, they provide the only public radio service for many listeners in our rural region - and, in some of our areas the ONLY public radio station that can be received at all.” (WNCPRI)
- * “We constructed these translators to serve populations in rural areas of Arkansas that were not being served by a public radio service. These communities continue to receive public radio programming through these translators and no full service stations.” (KUAR)
- * “The Central Coast of California has many areas where steep mountains descend precipitously into the Pacific Ocean, creating pockets of isolated communities

with no access to broadcast media other than KUSP translators.” (emphasis added) (KUSP)

- * “Rural radio stations are costly to operate and getting the channels is also not easy these days. We have not promoted the Chickasha translator much at all, about 30 miles out of OKC and yet we have enough contributions to keep it on air. It shows a real need in small towns even close to a metro for our service.” (KCCU)
- * “Listeners in our translator communities often serve KUSP as informal ambassadors to the rest of the community, passing on information, news and weather alerts to those who cannot receive our signal in isolated home or business sites.” (KUSP)
- * “Placing the translators in operation was a two-fold decision. 1. All the areas were unserved by any public radio service and we believe in our service mission to extend that resource. 2. The topography of Central Pennsylvania made low-power translators the only viable method to reach these population pockets.” (WPSU)

Second, public radio translators help distribute critical emergency information. Without extensive translator networks, many areas would not receive critical emergency news and information.

- * “The first climber to successfully climb Mt. McKinley in winter, Vern Tejas, was pinned down and had run out of food. Another climber knew of a food cache nearby. Tejas could hear KSKA from our translator and we broadcast the information. He survived and made it down the mountain alive.” (KSKA)
- * “Our translators carried our station's programming and provided critical emergency information to listeners during the Miller's Reach wildfires. Our news director, while reporting live from the road, was warning of smoke obscuring the road in areas and the need to have car lights on in case a driver suddenly entered a cloud of smoke. He was struck by the power of our broadcasts when cars all around him started turning on their lights.” (KSKA)
- * “Colorado is a very large state with large areas of sparse population. It also has a great deal of rugged mountainous terrain. Translators serve to relay important messages from the Emergency Alert System. KOA, a 50,000 watt AM station from Denver serves as the state's Primary Entry Point (PEP) for national alerts. It also serves as the originating station for Child Abduction Alerts, as well as other important life-saving messages of concern to Colorado's citizens. KOA's sky wave coverage allows it to reach 38 states at night, but often this sky wave propagation is weak and spotty around the state [of Colorado]. Daytime ground wave coverage is also inadequate to cover the entire state. A lot of stations, both

public and commercial, rely on KUNC's translators (and other stations' translators) to receive these important alerts. It would be very difficult and costly to re-invent this much needed and efficient relay network.” (KUNC)

- * “The [KUAT and KUAZ] translators are especially important to southern Arizonans for providing information about wildfires (the last several years have seen many large fires in the mountains of southern Arizona), and the severe weather and flooding that usually accompanies southern Arizona’s monsoon season of July and August. (KUAT and KUAZ)
- * “WRVO delivers frequent weather warnings and other community information [via its translators] (WRVO)
- * “We regularly receive phone calls from our listeners in Big Sur telling us of road and weather conditions in an area where heavy rains and flash floods are common” (KUSP)

Third, public radio translator provide programming that listeners find compelling.

Simply put, listeners want this translator programming – it serves their local needs:

- * “My personal anecdote was years ago playing Just Jazz. I got a call from the marine operator who patched through a call from a fishing boat on the ocean. The caller didn't want to request a song, he just wanted to say how much he was enjoying the music I was playing. I think of him regularly and how important our service was to him on that fishing boat.” (KSKA)
- * “There was no classical music station serving Kokomo. Listeners, particularly those associated with the Indiana University Kokomo Campus, asked WFIU to extend a translator into the area. Since then, we have a strong audience, which we share with WBAA-AM – a public radio talk service from Purdue University. Listeners tell us that they enjoy a full public radio experience between the two stations. The service that most listeners cite as important is the cultural affairs messages that we offer for the Kokomo area.” (WFIU)
- * “Public service is a cornerstone of KPLU. Our seven translators extend that public service to a quarter-million people in western Washington who otherwise would not be able to hear what we broadcast. No other delivery system can match the flexibility, affordability and convenience provided to the audience by broadcasting. Generally our translator signal provides the only comparable programming available to those people. No LPFM can match the breadth and quality of the programming KPLU provides to these audiences. In a more specific example, no LPFM can match the resources we allocate to northwest news, and the subsequent regional news programming we produce, which is local, relevant and valuable to the audiences tuning to our translators. Listeners to our translators show they value the service we provide by direct financial contributions. In every case the local money contributed from residents surrounding one of our translators covers the cost of providing our public service to that population.” (KPLU)

- * “Big Sur is home to cultural institutions, such as Esalen Institute, the historic Henry Miller Library and the Nepenthe restaurant, that depend on the KUSP translator to announce calendar listings and PSAs of events in the area.” (KUSP)
- * “The Coshocton Translator fills in an important gap in our coverage area as it serves the town of Coshocton that our full power transmitter does not reach due to terrain issues. Coshocton is a small, rural town with a loyal arts and cultural community that relies on this service for news and cultural that is provided only through this translator service to the town. We have regularly participated in arts and cultural activities in the community and are seen by citizens in the community as a lifeline to NPR news and classical music.” (WOSU)
- * “At the moment, KUNR is off the air in Bishop, California and the station has been inundated with emails and phone calls from local residents. They cannot receive NPR news and programs from any other source. The station is also their resource for classical music, jazz, blues and local news and weather updates. Whenever we are off the air, we hear from listeners about how much they miss the broadcast and how important it is for them to receive public radio programming.” (KUNR)
- * “The comments we have received from listeners --- especially after a new translator had been placed in operation -- have been most appreciative. Many whom had never heard "Morning Edition" or "All Things Considered" were very surprised and thankful that this new service was now available to them. Others, who had relocated into a rural part of our area from out of state, only to find that a public radio signal was not to be found, were even more thankful when "an old friend" was brought back to their dials.” (WPSU)
- * One Terre Haute, IN, listener reported that “in order to hear his favorite [public radio] programs, he had to get in his car and start a driving trek toward Bloomington” (WFIU).

Fourth, when public radio translators have technical problems or go “off-air,” the public notices and makes its unhappiness about service disruptions known:¹⁰

- * “[w]henever one of our translators has a technical problem, the telephones ring off the hook and the emails come pouring in” (KCBX)
- * “Whenever translator coverage is interrupted, we receive phone calls immediately, expressing concern about loss of KUSP programming.”
- * “We always hear from residents in Sierra Vista and nearby Huachuca City and Ft. Huachuca if there are technical problems with our translator. Further, we often

¹⁰ See also Appendix A.

hear from residents of Sierra Vista and its growing environs who request that the translator signal be “increased” so as to better serve the population.” (KUAT)

- * “We receive many calls when any of KUAT-FM’s translators are experiencing technical difficulties or are off the air. We also know from inquiries via telephone, letter and e-mail, and our membership records that we have many listeners who can pick up KUAT-FM’s signal only from translator broadcasts.” (KUAT)
- * “We certainly do hear from listeners when the translator is off or when we receive interference.” (KVCR)
- * “We know people are listening as they report to us when a translator is off the air. We have invested considerable time and money in improving the reliability of W293AF over the past year because of listener response. Listener response has indicated to us that W266AF has indeed provided a clear signal in areas of our city of license where various development and other sources of interference had adversely impacted the ability to receive a strong signal from WILL-FM.” (WILL)
- * “When our translators are out of service, listeners contact us to let us know how important those translators are to them. For people in these communities, our translators are their only opportunity to listen to public radio. Public radio not only provides them with national news and information, but with important news about state politics and issues of interest especially to Arkansans. Our local news coverage includes stories that concern the residents of our translator communities.” (KUAR)
- * “At the moment, KUNR’s translator is off the air in Bishop, California and the station has been inundated with emails and phone calls from local residents. They cannot receive NPR news and programs from any other source. The station is also their resource for classical music, jazz, blues and local news and weather updates. Whenever we are off the air, we hear from listeners about how much they miss the broadcast and how important it is for them to receive public radio programming.”

III. IMPACT ON EXISTING PUBLIC RADIO LISTENERS AND SIGNALS

As an initial matter, the PRROs acknowledge and respect that FM translator stations are secondary services to primary FM radio stations. This is something that the public radio industry has long understood and accepted (albeit sometimes painfully when a translator is displaced) – translators must make way for new primary station services. But making FM translator service secondary to the (still relatively new) LPFM service is an entirely different matter. The FCC should not change the “rules of the game” for translators and deprive listeners of current public

radio translator service. Such a change jeopardizes the substantial federal, state, local and individual investment in existing public radio FM stations. While LPFMs offer important local benefits as niche services or for start-up community groups, it is wrong for the FCC to assume that LPFMs are inherently more “local” than public radio FM translators, or that the public would prefer – or benefit more – from LPFM service, than from enjoying long-standing (or new) public radio FM translator service.

First, giving LPFMs any type of priority over FM translators will jeopardize public radio service on FM translator stations throughout the country, particularly those in the most sparsely populated regions. As cited above and based on 1990 Census data, over nine (9) million persons in the United States receive a public radio signal through a public radio translator station.¹¹

Second, the PRRO member stations report that public radio FM translator stations are sometimes operated “at the margin” or “at a loss,” in that the costs of operating the public radio translators generally exceed (or just equal) the donations received from listeners served by those translators. The PRRO stations persist in the operation of translators because they provide valuable service to communities -- many times, the only public radio service to listeners in isolated areas.¹² Thus, any action by the FCC that would make translators more difficult or costly to operate, or impair translator reception in any way, will have a corresponding negative impact on public radio translator service across the country.

Third, both the input and output signals of FM translator stations would be subject to interference from LPFM stations, including first, second or third adjacent channel interference.

¹¹ Corporation for Public Broadcasting, Network Report, Census of Population and Housing (1990).

In fact, interference to translators is likely because new LPFM stations are likely to be established in areas closest to population centers where frequencies are “available,” such as suburban areas and communities immediately adjacent to metropolitan areas that fall just outside the mileage separations under LPFM rules. These are the very areas where public radio translators – that “extend” the public radio signal from the metro area to surrounding areas -- would require protection from LPFM. In fact, interference with these suburban translators could knock out entire chains of public radio service in states or regions.¹³ The “input” signals for FM translators must traverse these areas in order to reach the translators; moreover, these are also the areas where FM translators are likely to be located in order to “extend” public radio service. Even an LP10 LPFM station could disrupt translator service.

In sum, if LPFM is given a higher priority than FM translators, an unknown (and unknowable) amount of the nine (9) million persons receiving “secondary” FM translator services can expect to lose service. The PRROs submit that any loss of existing service to the public from start-up LPFMs is unacceptable.

Fourth, even if the FCC would give existing translators priority over LPFM, but not new FM translators, the expansion of public radio translators to new service areas would be restricted because “later comer” public radio translators would be subject to being forced off-air by subsequent LPFM filers. As marginal operations, already dependent on a quilt work of funding

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¹² “One of the downsides of our translator network is that it is quite geographically large. While this places an extra burden on our engineering staff, we do know that the service is appreciated and valued.” (WPSU)

¹³ For example, see the map of KUER-FM’s Utah translator service in Appendix A. Interference that knocked out reception of the input signal to the Delta, Utah translator would knock out seven other translators later in the chain.

for survival, FM translator should be protected, as “co-equals” to LPFM, not relegated to a lower priority status. Moreover, in many cases, public radio listeners have been patiently waiting eight (8) years for new FM translator service in their communities. These new public radio FM translators (from March 2003) will help meet those long-denied needs for listener service. These listeners have waited long enough.

Fifth, as the *Second LPFM Order* acknowledges, there has been a massive onslaught of FM translator applications by national “noncommercial” and other filers who are not affiliated with public radio stations.¹⁴ Thus, public radio stations are already facing increasing difficulties finding available frequencies for the future expansion of FM translator service. Giving LPFM priority over translators would only further complicate and retard the development of public radio station translators, which are an essential ingredient in providing public radio service to all citizens of the United States, as Section 396(a)(7) of the Communications Act mandates.

Sixth, as explained above, giving LPFMs a new priority over FM translators will also jeopardize the substantial federal, state and private investment in public radio stations. See Appendix A for detailed information on translator funding. Existing public radio transmission plants were conceived, engineered and funded based on the FCC’s existing reserved and nonreserved FM band allocation system and in contemplation of the spectrum protection long afforded by the current rules. As described above, the existing public radio infrastructure depends heavily on FM translators to extend service.

Through the auspices of CPB and federal funding from PTFP, the federal government has acted to fulfill the mandate of Section 396(a) of the Communications Act. Over the course of the

past several decades, public radio transmission systems were built with federal and state support, as well as private support from corporations and individual donors. The Commission should not give priority to the LPFM service that would jeopardize these investments (which include significant local investment as shown above in Appendix A) or that would preclude the future expansion and growth of public radio service nationwide.

Even now, public radio struggles with fiscal difficulties that do not plague commercial radio. This is so even with the benefits of CPB-funding, substantial state funding, institutional support from colleges and university licensees, committed listener/donors, established corporate support, and (sometimes) sophisticated fundraising, as well as the highest-quality programming and support provided by NPR, Public Radio International and independent public radio producers. Public radio needs the economical service provided by its public radio translators.

IV. THE FCC ALREADY HAS THE TOOLS TO RESOLVE THE PROBLEM

In the *Second LPFM NPRM*, the FCC points to the extraordinary volume of FM translator applications filed in the March 2003 filing window (more than 13,000), as the rationale for revisiting the already-decided LPRM and FM translator priorities. With all due respect, the FCC had (and still has) the tools to resolve the LPFM advocates' concerns, as well as FM translator application "flood" problems.

First, the FCC itself controls the timing over application filing windows. It "gave" the LPFM applicants an LP100 filing window that preceded the March 2003 FM Translator Filing Window (and the still as yet unscheduled and unplanned first-ever Reserved Band FM Translator

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¹⁴ See Comments and Reply Comments of Rocky Mountain Public Radio and West Coast Public Radio, as well as the Comments and Reply Comments of the Station Resource Group, in MM Docket No. 95-31.

Filing Window that the public radio industry so fervently needs). Thus, it is fair to say that LP100 applicants had their “fair bite” at the spectrum apple – before any FM translators. The FCC could have (but did not) open an LP10 filing window before choosing to proceed with the March 2003 FM Translator Filing window. Since LPFMs and FM translators are – at the moment -- “co-equal” in priority, the scheduling of filing windows – in and of themselves – gives the FCC some control over which applications have priority over others.

Second, public radio advocated argued – forcefully— in other proceedings, that the FCC should impose an upper limit on the number of applications that could be filed in any NCE FM or FM translator filing window, in order to avoid just such a flood of applications. If the FCC had been concerned about a massive flood of applications, it could have set a limit (even a high one) on the number of applications that could be filed in the March 2003 FM Translator Filing Window. Even now, the FCC could set a limit on the number of translator stations or permits that can be owned by any one entity (or related entities), or could decrease the 8,000 still-pending FM translator applications by requiring applicants to limit the number of pending applications to a reasonable (even a high, reasonable) number – such as 100 per entity. These reasonable steps alone would resolve a great deal of the LPFM “preclusion” problem.

Third, based on the experience of the PRRO member stations, a large number of the March 2003 FM Translator applicants are speculators, who are not interested in building and operating a translator station, but only in selling the translator permits. The FCC could eliminate (or limit) such speculative applicants by not allowing sales of unbuilt permits, or by re-instituting its prior policies on sales of unbuilt permits, such that only the out-of-pocket costs of the application are reimbursable to the applicant. Again, this is a reasonable step that ensures translators are truly wanted and not simply a means to a quick (attempted) profit.

Fourth, the FCC could cut down on the number of meritless FM translator applications by strictly enforcing the licensing and use policies for non-reserved band FM translator stations, by refusing to permit “curative” amendments for certain FM translator application defects, and by setting up certain basic application criteria. Based on information and belief, a large number of non-reserved band FM translator applications in the March 2003 window: (a) specified a “primary” station that had not given its written consent to be rebroadcast by the proposed translator applicant; (b) could not, under any circumstances, receive off-air the signal of the primary station it specified as an input channel; (c) did not have any reasonable assurance of site availability; and/or (d) could not have certified as to financial qualifications or made an adequate showing that the applicant had the necessary resources to build the operate a translator stations for three months without revenue. Any or all of these measures would drastically reduce the number of frivolous FM translator applicants, giving LPFMs many more opportunities.

In sum, the FCC should not throw the baby (public radio FM translators) out with the bathwater (the flood of questionable FM translator applications filed by a small group of non-local applicants). There are better ways to fix the problem than by use of draconian measures. The FCC does not need to change wholesale the priority of FM translator applicants and LPFM to resolve the “flood” problem.

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V. CONCLUSION

For the reasons set forth above, and as demonstrated in the attached Appendix A, the PRROs submit that the FCC should maintain the “status quo” with respect to LPFM and FM translator priority. The services should have “co-equal” status. Both are important, both serve very important “local” needs (albeit in different ways), but public radio FM translators have a long-standing existing audience that should not be disrupted, as well as a need to serve future audiences in a manner that won’t face undue disruption. The FCC can give LPFMs greater opportunities by better management (and limitations) on FM translator windows and application requirements, and can do so right now, to winnow down the March 2003 translator window applications. Keeping both services “co equal” in status is the best solution and best serves the public interest.

Respectfully Submitted,

EASTERN PUBLIC RADIO

CALIFORNIA PUBLIC RADIO

PUBLIC RADIO IN MID-AMERICA

SOUTHERN PUBLIC RADIO

WESTERN STATES PUBLIC RADIO

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August 22, 2005

